IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.760 OF 2007
IN
EXECUTION APPLICATION NO.529 OF 2001
IN CASE NO.CC-1V/17/97.

M/s. Akshay Mittal Premises
Co-op. Soc. Ltd ..Disputant

versus

M/s. Roto Prints .. Opponents

And

Allahabad Bank, Recovery Branch,
Mumbai ..Applicant

M/s. Deepa Kamat for opponent.

Mr.K.R.Lakhandani for Intervenor.

Dr. Mrs.R.R.Ajinkya for Auction Purchaser

Coram : S.R.Sathe, JJ.
Dated : 14th June, 2007

P.C.

1. Heard learned Counsel for the disputant as well as the learned advocate for the opponents. Also heard the learned advocate for the applicant-intervenor and the purchaser.

2. Admittedly, an award has been passed in favour of the disputant M/s. Akshay Mittal Premises Co-op. Society Limited by the Judge, Co-operative Court No.1, Mumbai, on 22.7.1997 whereby the opponents 1 to 3 were directed to pay the amount of

Rs.1,68,494/-, Rs.1,01,916 and Rs.1,24,915/- respectively. As the opponent M/s. Roto prints did not pay the amount to M/s. Akshay Mittal Premises Co-op. Society Ltd., the present Execution Application has been filed by the society. The warrant of attachment was issued in pursuance of the order passed by this Court (Coram: S.U.Kamdar, J) on 10.1.2005. After the attachment of the property, as per the directions of the Court, necessary publication was issued for holding auction of the said property and accordingly the sheriff held auction in which one Gopi Didwania gave the highest bid i.e. of Rs.52,50,000/- for purchase of the property i.e. Unit No.B/152 situated at Building No.5, Akshay Mittal Premises Co-operative Society Limited, Andheri Kurla Road, Andheri (East), Mumbai. The Sheriff has reported that the said price is more than the reserve price fixed by the Court. The Sheriff, therefore, submitted the report, requesting this Court to confirm the auction sale in favour of Gopi Didwania.

3. It is at this stage, Allahabad Bank submitted an application and took out Chamber a Summons and prayed that they be allowed to intervene

as they have already obtained a decree and recovery certificate in their favour against M/s. Roto Prints and other defendants. It is the case of the applicant intervenor that the property in question was already mortgaged with Allahabad Bank even prior to its attachment by the present disputant society. Not only that, but the said charge was also recorded by the said society. Even then keeping the present applicant intervenor in dark the property was attached and auction was held. It is the case of the applicant that the applicant is the secured creditor in whose favour DRT has passed a decree and accordingly recovery certificate is issued and the property in question stands attached by them by virtue of the attachment warrant dated 8.9.2004. In order to substantiate this the applicant has produced the Xerox true copy of the judgement passed by the DRT as well as the copy of recovery certificate, and the attachment warrant. From the perusal of these documents it does appear that the property in question was in fact mortgaged to the present applicant intervenor and it was also attached by virtue of attachment warrant dated 10.9.2004. So, it is very clear that when M/s. Akshay Mittal Co-op. Society asked for the

attachment of the property, they did not disclose the material fact with regard to attachment of the said property by Allahabad Bank and the charge of Allahabad Bank on the said property. So, under such circumstances, the applicant is certainly justified in making submission that the sale should not be confirmed and it should be stayed.

4. The learned advocate for the applicant intervenor submitted that as the applicant has obtained a recovery certificate and subsequently attachment warrant against the present defendant, this court has in fact no jurisdiction to try the present execution application. For this proposition he has led his hands on a case Allahabad Bank vs. Canara Bank AIR 2000 SC 1525. I have carefully gone through the said authority. The facts of the said case and the facts of the case in hand are quite different. In that case the Apex Court was considering whether the other Civil Court or Company court is having jurisdiction to execute decree passed by the DRT. Here no such question is involved. So the above cited case is of no use. However, one thing is certain that the disputant

society ought to have disclosed the fact that the property in question is already charged by Allahabad Bank and the same is attached.

5. In the above mentioned peculiar facts and circumstances, the sale cannot be confirmed in the name of the present highest bidder. At the same time, there is no provision as a result of which the present execution proceeding can be transferred to DRT. So, the applicant's prayer in that behalf is rejected.

6. The learned advocate for the purchaser has submitted that if the auction sale is not confirmed then the Sheriff be directed to return the amount deposited by the highest bidder within a week.

7. Hence, I hereby direct that the amount deposited by the auction bidder be returned by the Sheriff to him within 10 days from today.

8. Chamber Summons is disposed of in above terms.

9. Parties to the proceeding and Sheriff to act

on the copy of this order duly authenticated by the Court Associate.

(S.R.Sathe, J.)